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LEGISLATIVE-EXECUTIVE RELATIONS:
THE HINGE OF AMERICAN FOREIGN POLICY

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Mr. Chairman and members of the Committee, I am pleased to be with you to discuss the central question of American foreign policy decision-making: how can we forge an effective partnership between Congress and the executive branch in order to govern America's role in the world? It is a question which has endured since the birth of the Constitution. Indeed, the prolonged paralysis which afflicted the former colonies under the Articles of Confederation represented an even more acute example of the difficulties of designing and implementing a sensible legislative-executive relationship in a republican government.

The challenge of making a democratic regime secure in a world of generally authoritarian and frequently hostile powers was vividly perceived by the founders. Madison and Hamilton, Jefferson and Adams, no less than de Tocqueville and Bryce in later years, well understood the numerous dilemmas of democratic statecraft -- the necessity to balance decisive executive action with deliberate legislative consideration, the imperative of secret diplomacy as a threat to the integrity of popular government, the need to concentrate authority for some foreign policy decisions versus the prerogative of Congress to ensure wide participation in decisions affecting the welfare of every citizen. It is perhaps small solace to note that every generation of American leaders has had to cope with these dilemmas. Today we are all aware that the requirements of survival in a complex and dangerous global community place unprecedented

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stress on the American system of separate institutions sharing power to shape foreign policy. Under the pressure of modern existence, the conundrum stated by Lincoln grows even more vexing: "Must a government of necessity be too strong for the liberties of its own people, or too weak to maintain its own existence?" If there is to be a satisfactory answer to that perplexity, it must lie in the rejuvenation of a constructive balance between Congress and the executive branch. Toward that end, I would like to offer a few broad perspectives and some specific proposals.

It seems obvious that we must discard some of the favored categories in which American government has long been discussed. The notion that "the President proposes, the Congress disposes" was obsolete at birth. It was always a drastic oversimplification which failed to convey the nuances and varieties of political behavior contemplated by the Constitution. There is hardly more merit in the familiar description of the Constitution as an invitation for the legislature and the executive to struggle for control of American foreign policy. By emphasizing the competition for power between the branches, that maxim understates what I take to be the true purpose of the constitutional framework, namely, to guarantee that the views and concerns of as many citizens as possible are brought to bear on issues of the greatest moment. The objective of the struggle is not control but wise policies acceptable to the American people. If we lose sight of that end, if the struggle itself becomes the preoccupation of those in Congress and the executive branch, then the grand plan of the Constitution is not served, but thwarted. One must acknowledge that too often over the years the plan has indeed failed. But stalemate, pettiness, and bitter recriminations are not permanent features of legislative-executive relations. Cooperation, conciliation, and effective collaboration are also essential features of the relation-

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ship between the branches and one gravely distorts the American experience to ignore them.

If Vietnam, Cyprus and Angola are symbols of friction between the Capitol and the White House, surely one must juxtapose major issues on which the branches are generally in accord. Congress and the executive branch agree

--- that the steady search for a durable peace in the Middle East should remain on course

--- that the attempt to restrain the reckless competition in strategic arms between the United States and the Soviet Union must continue

--- that the alliances with Western Europe and Japan are proper cornerstones for the maintenance of peace and security

--- that, pending multilateral arrangements for arms reductions, the United States must maintain a substantial military establishment

--- and that the mounting interdependence of the United States and other nations precludes a retreat from an active international role.

Properly developed, these points of agreement can do much to restore an affirmative tone to the relationship.

As the first principle of a more harmonious relationship between Congress and the Presidency, I would commend the concept of an alliance of political leadership in both branches to oversee the permanent government. The political levels in the executive branch share with the elected members of Congress the mammoth task of mastering the bureaucracy. Recognition of this common interest need not presume that the political levels in the legislature and the Executive should be hostile toward the career civil servants who make up the continuing government bureaucracy. Dedicated career officials are the mainstays of

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government, in the international field no less than in the domestic. But they need and deserve coherent political leadership both from Congress and the senior echelons of the executive branch. It falls to legislators and the political appointees in the executive branch to assure that the results of bureaucratic politics do not diverge from the goals of representative politics.

A clear perception of this shared mission can do much to lubricate legislative-executive relations. In this effort to make government responsive to the preferences of the electorate, it is important to note that Congress actually enjoys relatively greater continuity than the political levels of the executive branch. Even with the increased turnover of recent years in Congress, the average tenure of members is considerably greater than that of senior Executive officials. One study reports that Cabinet officers have averaged only two years consecutive service during the past decade, while Assistant Secretaries have served an average of only eighteen months. In such a situation, with key legislators often serving for many years on committees with primary responsibilities in foreign policy, the claims of congressmen to exert significant political leadership regarding issues with which they may well be more familiar than Cabinet and sub-Cabinet officials deserve consideration.

It is a commonplace of discussions on foreign policy to lament the collapse of the old consensus. Recalling the notable achievements of post-war U.S. foreign policy, many observers despair of ever rebuilding viable arrangements between Congress and the President. I would discount that pessimistic outlook on two scores. First, as I have already mentioned, the

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visible frictions of recent months have tended to cloud our view of the important areas of agreement which remain. In the country and in the government, I would submit, the danger flowing from our late distresses is not that the United States will retreat from a vigorous international involvement toward some isolationist escape to Fortress America. The larger risk may well be that a resurgent nationalism may make the United States a more truculent participant in international affairs.

Secondly, my own hopes for the future of American foreign policy are sustained by the conviction that a new substantive consensus must await the creation of a new procedural consensus, a goal toward which Congress has already led the way through a number of historic innovations. In coping with the great problems of world affairs, most American citizens will have neither the time nor the inclination nor the information to examine each issue in detail. They must rely upon the competence and responsiveness of the chosen officials to decide in their behalf. Yet confidence in our governmental institutions and leaders has plummeted to unwonted depths. Before they vest renewed confidence in the system, Americans are understandably demanding that Congress and the executive branch devise procedures which produce reasonable decisions on complex questions and which avoid the excesses of monolithic decision-making associated with the war in Vietnam. Instead of invoking the mythical virtues of some ideal type of executive decision-making, a wise President will welcome a more active participation by Congress in foreign policy as the most effective means of assuring the electorate that suitable procedures to safeguard the exercise of power are being followed. There is much to be said for the commonsense view that foreign policy will be less

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vulnerable to reckless or ill-considered judgments if both Congress and the President participate actively.

From this point of view, several procedural reforms which Congress has adopted in the last few years assume added importance. Contrary to some allegations, the War Powers Act does not threaten the President's capacity to respond to military emergencies; rather it guarantees that Congress will meet its obligation to determine by open deliberation and voting whether the United States will sustain an armed conflict for a prolonged period. Its fundamental premise is that future conflicts must find this country either quickly united or promptly disengaged. If there is a sounder prescription for the use of force by a democratic government, no one has yet advanced it.

Similarly, there are major foreign policy implications associated with the new congressional budget process. For the first time, a procedure exists to weigh international budgetary commitments, whether they are for economic development, military assistance, or a major weapons system, against domestic claims on the government's resources. All Americans should welcome a procedure by which Congress obliges itself to make the hard decisions and to assess the difficult tradeoffs among and between foreign and domestic needs.

By insisting that all Executive agreements, whether open or classified, be filed with the appropriate congressional committees, by seeking to establish appropriate guidelines for transfers of military equipment to other countries, by undertaking the first full-fledged investigations of the U.S. intelligence community and in countless other ways, Congress is responding to the felt need of the American people for assurances that the system of checks and balances is still intact and functioning.

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One of the most encouraging aspects of the reviving congressional activity in foreign policy is the change of attitudes on the part of the members of Congress. There are many causes of the altered congressional stance on foreign policy, including especially the spreading understanding that foreign affairs and domestic affairs are intertwined beyond extrication. In the apt phrase of my colleague Bayless Manning, more and more policy problems are "intermestic", combining both international and domestic concerns. This trend makes it even less feasible for Congress to leave the bulk of foreign policy issues to the executive branch. As congressmen have moved from a posture of relative deference toward the Executive in foreign policy to one of animated legislative initiatives, the members are performing one of their most vital functions. As they reach out for important problems to engage their interest, congressmen help to elevate to the political decision level questions which might otherwise be resolved arbitrarily within the bureaucracy or by the political leaders of the executive branch with inadequate consultation. An important model for congressional behavior is that of the "issue generator." The efforts of individual members and committees of Congress can call attention to issues with significant implications requiring settlement in the more representative channels of Congress, rather than elsewhere in government. To be sure, not every question should be thrown into the more cumbersome processes of the legislature; to do so would make the system unworkable. But, by ferreting out a large number of debatable questions, congressmen raise the likelihood that the most vital issues will surely emerge somewhere on the legislative agenda.

In foreign policy, as in other fields, members increasingly play the

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role of policy entrepreneurs, identifying issues of concern and staking out their positions. The procedure is not systematic and may well distort the options in a number of instances, but it provides a reasonable protection against the danger that crucial options for public decision will be smothered in the bowels of the bureaucracy.

Sophisticated entrepreneurship by a member concerned with a particular problem will generally not result in institutional action by the Congress. Commonly, and preferably, the result will be to enhance bureaucratic decision-making by injecting representative preferences from the legislative branch. The concept of congressmen as policy entrepreneurs, contending for the attention of the executive branch in its deliberations regarding complex issues, is not an invidious one; rather it makes the point that a valid and lofty objective of legislative politics in our time is to steer bureaucratic politics toward outcomes more acceptable to the community at large. Time and again the expression of legislative views on pending issues has helped to elicit more forthcoming action by the executive branch, tilting the bureaucratic balance of power toward one outcome rather than another. Item: the opening to China, widely applauded as a premier achievement of the Nixon Administration, would scarcely have occurred without the evident shift in legislative attitudes toward some form of contact with the Peoples' Republic. Item: the 1972 strategic arms agreements closely paralleled the Senate's 1970 call for restraints on offensive and defensive weapons. Item: Secretary of State Kissinger now reportedly regrets that he did not respond more favorably to the arguments advanced in this committee and elsewhere in Congress during 1969 and 1970 for restraint in deployment of multiple warhead missiles as a method of

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simplifying future strategic arms accords. In a large number of cases, Congress has acquitted itself well, largely because a few members or committees informed themselves thoroughly about pending issues and conveyed their perspectives formally or informally.

Yet members of Congress are understandably unhappy with their role in foreign policy. Seventy-six percent of the congressmen and senators surveyed by the Murphy Commission want to see changes made in arrangements for consultation and liaison with the executive branch. This is a major point of dissatisfaction in the Congress and recent reforms have probably amplified this sense of discontent. Senate Majority Leader Mansfield found few helpful suggestions in the Murphy Commission's Report, pointing to its focus on management of foreign affairs rather than on the legislative-executive nexus which had been the principal concern of the Commission's sponsors. The Senator disparaged repeated exhortations for cooperation between the branches as invariably "a one-way street." The Senator's feelings undoubtedly mirror those of many of his colleagues in both houses.

To be sure, the refinement of machinery for legislative-executive collaboration in foreign affairs is an onerous chore. It is difficult to design formal arrangements to insure adequate consultation and most commentators are driven to rely on pleas for mutual confidence and voluntary linkages between the branches. No one can deny that the quality of the relationship will depend primarily on the mutual respect and trustworthiness of the leaders in both the legislature and the executive. Yet some measures can be taken to facilitate adequate consultation, both on a continuing basis and during crises. One is interested to learn, again from the Murphy Commission

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survey of attitudes in the House and Senate, that there seems to be majority support among legislators for some form of executive-legislative liaison committee to deal with foreign affairs. There is also apparently majority support for increased reliance on joint hearings to reduce the burdens on senior executives and to provide a more integrated response from congressmen. Although precise definitions will be difficult, a majority of congressmen also voice a desire for more formal specifications of the Executive's responsibility to consult with Congress.

These and other findings suggest that Congress is more open to experimentation with various approaches to shoring up legislative-executive relations than was previously the case. This should be applauded, since intractable problems do not lend themselves to ideological, single-shot solutions. Many concerned and responsible figures are groping for better methods of legislative-executive collaboration without illusion that perfect procedures can be devised. It is clearly the time for sorting out novel ideas, testing the most promising ones, and discarding those which fail to demonstrate their value.

In this spirit, I would like to put forward two proposals, one familiar and one new. Let me sketch the familiar proposal briefly. If the general themes I have struck are valid -- the goal of an alliance between political leaders in Congress and the Executive to guide the bureaucracy, and the special mission of congressmen as policy entrepreneurs, stirring the bureaucratic pot to ensure that important issues come to the attention of political decision-makers -- one evident need is for methods to enable congressmen and senators to penetrate the most sensitive areas of the bureaucracy consistently and

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with due regard for the confidentiality of the information with which they will be dealing. One comes immediately to problems of information control and classification, and the problems of handling such delicate materials in legislative channels. Let me hasten to add that Congress' record in handling classified information is a great deal better than the caricature common in most discussions of the subject. In this committee and others of the House and Senate, many vital secrets have been protected for long periods of time. No leaks from Congress could surpass the incredible disclosures made by executive officials regarding nuclear weapons programs in the Middle East, the Pentagon papers, and certain military operations in Southeast Asia. But without arguing that case in detail, there is no question that more systematic arrangements should be made to govern the classification of data and the sharing of such information with appropriate officials in both Congress and the executive branch.

It seems extremely unwise to leave questions which go to the heart of legislative-executive relations under the control of mere executive orders. It is long since time for Congress to accept the responsibility for drawing guidelines regarding sensitive information. A statutory basis for the system of information classification should be high on the agenda of congressional priorities. This is not only because of the obvious anomalies and defects of the procrustean system which has evolved in Executive hands. It is even more urgent that Congress purchase fuller access to information essential to sound legislative conduct by subjecting itself to prudent and carefully drawn constraints in its disposition of classified data. A classification statute would testify more potently than any other device to Congress'

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determination to demand and exercise access to the broadest range of classified information while subjecting its members and staffs to commensurate restraints and sanctions for any misuse of properly classified information. The subjection of Congress to arbitrary and often self-serving controls defined by the executive branch is not an acceptable situation. The exclusion of Congress from access to classified products of the intelligence community and the National Security Council system is a virtual guarantee of inadequately informed legislative participation in foreign policy decisions. The separation of powers cannot be a command for Congress to be ignorant or an excuse for it to be indifferent to the basic information on which judgment must rely. If politics in the highest sense is to control bureaucracy, legislative and executive leaders must join actively in penetrating the bureaucratic maze. This will demand that Congress discipline both the executive branch and itself by constructing common ground rules for access to vital information.

I know that some members of Congress are wary that attempts to compose an effective classification statute with sanctions for legislators who violate the rules may run afoul of the Constitution's speech and debate clause. The problems of drafting such a statute are real. One can imagine circumstances in which a member of Congress might be driven by conscience to disclose information against the specific injunction of the classification system. Nevertheless, in my opinion, the definition and acceptance of a suitable classification system, including sanctions sufficient to ensure compliance with its provisions, seem to me suitable topics for majority rule. The logic of the Constitution would indicate that the speech and debate clause cannot be a

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license for thoughtless disclosure of genuinely sensitive information by individuals who oppose a particular policy or disagree with the classification, any more than the right of free speech constitutes permission to shout "fire" in the proverbial crowded theater. So long as the classification statute provides ample and explicit procedures for appealing decisions regarding classification, the measure should be valid and enforceable. Without entering the complicated realm of criminal law, so far as members are concerned, the House and Senate could undoubtedly devise potent sanctions of their own under their own separate rule-making authority.

It is worth pausing to note that the Senate has made some progress in this area by the recently enacted Senate Resolution 400, approved on May 19. While the Resolution makes no attempt to alter the executive order basis of present classifications, it does assert the right of the full Senate to override an executive decision regarding classification if a dispute arises between the Senate Select Committee on Intelligence and the President. The Resolution also asserts the sense of the Senate that any department or agency of the United States involved in intelligence activities should furnish any information or document in its possession whenever requested by the Select Committee. In return, the measure provides for independent review by the Senate Select Committee on Standards and Conduct of any breach of confidentiality or unauthorized disclosure of information and contemplates such sanctions as censure, removal from committee membership, and expulsion from the Senate for any member found guilty of a serious violation. The Senate's initiative in these matters strikes me as historic and commendable. It anticipates several of the

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matters which will have to be resolved in the drafting of a general classification statute.

Whether the House creates a separate committee or the two chambers move toward a joint body to deal with the intelligence community, the time is evidently ripe for the Congress to replace the executive system of classification with a statutory regime.

I have laid such stress on the classification problem because the problem of information management remains a paramount issue in legislative-executive relations. Yet even if Congress and the President can reform the present system of information controls, it will not ensure habitual or automatic consultation on all the problems of foreign policy in which Congress is or ought to be interested. Can one contrive a mechanism to maximize the likelihood that Congress will be in the act on major foreign policy questions early enough to be an effective participant? Here I would advance for your consideration an approach which I do not believe has been explored before. As an agent to enhance the consultative process, I think Congress might well consider the appointment of a Foreign Policy Auditor.

As a body of 535 Constitutional equals, Congress has historically had little use for agents. Members and leaders alike stress the limitations even on the elected leaders of Congress to act for Congress itself. The notable exception is the General Accounting Office. The Comptroller General and his staff have served remarkably well as Congress' agents in maintaining the integrity of government accounts and expenditures. They have far-reaching access to government financial information and other documents and considerable authority to act for Congress in compelling executive agencies to comply

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with GAO rulings. The general esteem in which the GAO is held in Congress is a measure of the agency's effectiveness, although a number of surveys find wide resistance among the members to any entry by GAO into "policy" matters.

Congress could, however, notably strengthen its role in policy-making by employing a different agent with a mandate for a distinctive kind of policy audit of issues emerging in the executive branch. As a matter of fact, the practice of policy audits is already a large element in the legislative-executive relationship, albeit on a random and decentralized basis. Countless staff members spend innumerable hours on behalf of congressmen and senators probing for information and ideas about problems known to be under consideration in the executive branch. In some instances, senior figures in the executive branch retain intimate links to the Congress and themselves serve to alert some members to policy issues arising in their domains. This was reportedly the case for many years with the Inspector General of the Agency for International Development whose special relationship with a few ranking legislators kept them alert to matters normally considered proprietary to the executive branch.

The proposal for a Foreign Policy Auditor would transform this rather erratic process into a more systematic and thorough means of plugging Congress into deliberations on major foreign policy issues. One reason for seeking early legislative entry into this process is the habitual tendency of the executive branch to lock itself into a policy stand or commitment before adequate consultation with the legislative branch. Close questions which might have been resolved by a balance of 51 to 49 in executive channels are

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often presented to the Congress as clear-cut matters in which the balance of decision was more like 90 to 10. Whatever the margin of decision, the products of bureaucratic analysis on which executive judgments depend are not fairly construed as the property of the executive branch. Intimate counsel to the President may well be privileged but the exploration of options, the presentation of basic data, and the projections of likely consequences should be accessible to all responsible decision-makers, whether in the executive or legislative branch.

With these factors in mind, what might be the function of a Foreign Policy Auditor? Certainly it would not be to speak for the Congress, to express a legislative preference regarding one option or another, or to predict the likely behavior of Congress if presented with various proposals. If the chosen leaders of Congress could scarcely hope to tender such judgments, an appointed agent had best avoid them like the plague.

Rather, the province of a Foreign Policy Auditor would be far more mundane, but extremely valuable. The mission of the Foreign Policy Auditor and his tightly limited staff would be to monitor the output of the National Security Council study machinery, the analytic products of the intelligence community, including National Intelligence Estimates, and the options papers of such other designated bodies as the Council on International Economic Policy and the Office of the Special Representative for Trade Negotiations. Given access to these and similar materials, the Auditor would undertake

- to alert the Majority and Minority Leaders of both houses to impending issues and decisions regarding which they might wish to request full consultation;
- to identify for senior executive officials potential problems on

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which they might wish to seek legislative counsel;

--- to brief appropriate congressional leaders in advance of major consultations in order to make them more focused and meaningful.

Notice that this job description outlines what is quintessentially a staff responsibility. Operating along these lines, a Foreign Policy Auditor would in no respect impinge upon the prerogatives and responsibilities of elected legislators. His sole responsibility would be to make it possible for them to fulfill those responsibilities. In the first instance, his reports would go to the elected leaders of Congress who would retain responsibility for deciding which other committee chairmen and ranking members should be brought into the consultation.

A key feature of this plan would be the improved arrangements for preparing congressional leaders to participate in the consultations which would result. It is sometimes the case today that congressional leaders are not as well briefed for major encounters with the executive branch as are members of private boards for meeting the administration of organizations for which they are responsible. Productive consultations can not be expected if the executive branch overwhelms weakly prepared legislators with voluminous data presented on short notice and with the implied presumption that the executive branch has conducted exhaustive studies which make unnecessary extensive legislative review. Without exacerbating an adversary relationship, a well-informed Foreign Policy Auditor could do much to equip selected congressional leaders for more significant exchanges at the highest levels of government. The person chosen for this responsibility must obviously be a figure of stature, competence and independence. He must enjoy the confidence of all

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members of the congressional leadership and the ready acceptance of the executive branch, as well. In some circumstances, the President may choose to invite the Auditor to sit with the National Security Council as a convenient means of expediting preparations for consultations with the Congress. Such an arrangement would, by the way, parallel the Senate's provision to permit a personal representative of the President to attend closed meetings of the Select Committee on Intelligence, when invited to do so.

Some observers may be apprehensive that the proposed Auditor would be unduly intrusive and would inhibit executive decision-making. Insofar as the Auditor deals only with preparatory materials setting forth the elements of decision and does not impede the kind of privileged counsel to the President which normally occurs in even more intimate settings than the National Security Council, such anxiety may be discounted. And evidently the potential rewards in terms of improved legislative-executive relations are substantial.

One of the cardinal obstacles to formalizing arrangements for more extensive consultation between senior legislators and the executive branch has been the difficulty of specifying which members of Congress should take part. By specifying those aspects of the liaison function which can be handled on a staff basis and by selecting a neutral agent to perform them, Congress can mute the political difficulties of choosing which members should be engaged in particular consultations. Upon receipt of the Auditor's report on a particular problem, the Majority and Minority leaders can then make an informed judgment as to which committees bear primary responsibility and should therefore be represented in the proposed consultations. Their accountability to their colleagues should assure the leaders' sensibility to the proprieties.

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So far as the Auditor's accountability is concerned, he should be under tight control by the leaders. To assure this control, whatever the length of the Auditor's nominal tenure -- and I would suggest six to nine years -- he should be subject to removal by a majority vote of either house on the recommendation of any one of the four leaders. For so special a mission it seems reasonable to subject the official in question to an extraordinary "vote of confidence" procedure. The Auditor must retain the confidence of both the House and the Senate if he is to be a credible agent of the Congress.

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The creation of a staff agency of this character would be helpful to Congress in assessing the routine evolution of major policies. It would also be useful during major crises. The existence of such an Auditor would certainly have brought Congress into the act in a more meaningful way during the prolonged Cuban missile crisis of 1962. The very title of Robert Kennedy's memoir -- Thirteen Days -- makes the point that there was ample time to engage congressional perspectives during that crisis, had there been the will and the means to do so. Indeed, President Kennedy is recorded as having said later that, if ranking members of Congress had been given as much time to consider the matter as those in the executive branch, he thought the two branches would have converged on a common solution. There are few crises short of battlefield disasters and the instant calamity of a nuclear strike in which properly briefed members of Congress could not play a valuable part. Since the actual conduct of military operations is constitutionally reserved to the Chief Executive, the Foreign Policy Auditor would not expect access to related materials, but analyses pointing toward the initial engagement of U.S. forces, their deployment to new theaters, or other measures preparatory to a crisis response would fall within his -- and Congress' -- province. In several respects, the presence of an alert and informed auditor could make possible a more perceptive and potent congressional role in crisis decision-making.

It goes without saying that these broad themes and brief proposals are scarcely a comprehensive program for satisfactory legislative-executive relations in foreign policy. They do, however, point a direction, and that direction is necessarily toward a more activist legislative stance regarding

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executive activities in foreign affairs. The classical model of a relatively passive legislator who awaits executive initiative to present issues for decision will not suffice. If Congress is to thrive in a bureaucratic age, it must not shy away from penetrating the bureaucratic processes early enough to have an impact on the shape of options and the tendencies of policy.

The objective of these suggestions to share foreign policy information and to establish a Foreign Policy Auditor is not to hamper executive deliberations but to mold a more confident partnership between the branches. Such a partnership cannot develop when the executive branch is seen as constantly suspect and the legislative branch as consistently maladroit. Coupled with other procedural reforms already in train and with the persistence of individual legislators in their efforts as policy entrepreneurs, these innovations can go far toward launching a more wholesome relationship between the branches. And on that relationship, ultimately, hangs the viability of American foreign policy.

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